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March 11, 2011

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: AT&T Mobility and Qualcomm Incorporated
Consent to the Assignment of Lower 700 MHz Band Licenses
DA 11-252
WT Docket No. 11-18
ULS File No. 0004566825

Dear Ms. Dortch:

The above-captioned application, in which AT&T Mobility Spectrum, LLC (“AT&T”) seeks approval to acquire Lower 700 MHz D and E Block spectrum from Qualcomm Incorporated (“Qualcomm”), confirms the importance for wireless carriers of obtaining access to additional spectrum generally and spectrum below 1GHz in particular in order to make the transition to 4G wireless broadband services. If the Commission decides to approve the transaction, it should therefore act swiftly to make additional spectrum available for wireless broadband services. In particular, it should expeditiously complete its ongoing spectrum inventory and immediately commence proceedings to reallocate spectrum that it identifies in the inventory as appropriate for reallocation; work with NTIA to achieve the reallocation of government spectrum for commercial use, beginning with the 1755-1780 MHz band; and issue a *Notice of Proposed Rulemaking* to open discussion on service and auction rules for the Upper 700 MHz D Block.

The Proposed Acquisition Confirms The Importance Of Wireless Carriers Having Access To Additional Spectrum, Particularly Spectrum Below 1 GHz

In this proceeding, AT&T seeks approval to acquire Qualcomm’s six Lower 700 MHz D Block licenses (716-722 MHz), which were awarded on an Economic Area Grouping (“EAG”) basis and which effectively provide a national footprint, as well as its five Lower 700 MHz E Block licenses (722-728 MHz). Each of the licenses covers 6 megahertz of spectrum. Thus, if the transaction is approved, AT&T will acquire an additional 12 megahertz of spectrum in some of the nation’s most populous and spectrum-constrained areas, and an additional 6 megahertz of spectrum throughout the remainder of country.

AT&T argues that existing carriers have sufficient spectrum.^{1/} It cites, in particular, T-Mobile's recent announcements of its roll out of 4G service as evidence of this.^{2/} While T-Mobile is currently well positioned to serve its customers, the deployment of 4G service does not mean there is adequate availability of spectrum, especially over time. In the longer term T-Mobile and other carriers will need additional spectrum resources, just as AT&T's proposed acquisition demonstrates, to transition to next generation wireless services and to meet the explosive growth in consumer demand for more bandwidth-intensive mobile voice, video, and data offerings.^{3/}

While AT&T downplays the significance of spectrum below 1 GHz, the Commission itself has found otherwise. In the *Wireless Competition Report*, the Commission noted that the characteristics of spectrum below 1 GHz make it particularly suitable for wireless broadband services. Lower-frequency spectrum possesses superior propagation characteristics that create certain advantages in the provision of mobile service, especially in rural areas.^{4/}

The marketplace has similarly recognized this advantage by placing a premium on 700 MHz spectrum, as the winning bids in Auction 73 demonstrate. The provisionally winning bids for the

^{1/} See AT&T Mobility Spectrum LLC, Public Interest Statement, at 30, ULS File No. 0004566825 (filed Jan. 13, 2011) available at <https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp?ATTACHMENTS=jhmNNttNqQpLnhTy4jsMpMXqdjd2ss1GT3h0Lyb5YnY2GgY4Fnm8!290568378!-1789085840?applType=search&fileKey=1062932100&attachmentKey=18668467&attachmentInd=applAttach> (“AT&T Mobility Spectrum ULS Application Public Interest Statement”).

^{2/} *Id.* at 33.

^{3/} See, e.g., *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, 25 FCC Rcd 11407, at 5 (“Wireless Competition Report”) (noting the “transition to a data-centric market” where “data traffic has grown significantly, due to the increased adoption of smartphones”); Cisco Systems, Inc., *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2010–2015*, Feb. 1, 2011, available at http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.pdf (finding that global mobile data traffic nearly tripled in 2010 for the third year in a row, and that average smartphone use doubled in 2010 with the average amount of traffic per smartphone of 79 MB per month.). Some project that the amount of mobile data in 2014 will be 50 times what it was in 2009. Ramon Nuez, *T-Mobile and the Mobile Broadband Future*, HUFFINGTON POST, June 4, 2010 (reporting that the growth of the Internet since 2000 is estimated at 399.3 percent, with 87 percent of that growth consumer-driven). Others estimate that wireless data use will grow an astounding 1,914% from 2010 to 2015. CTIA – The Wireless Association®, *Ensuring Nondiscriminatory Access and Rates for Wireless Pole Attachments*, Attachment to Letter from Brian M. Josef, CTIA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-245, at 4 (filed March 8, 2011).

^{4/} *Wireless Competition Report* at ¶ 4; see also *id.* at ¶ 269 n.731 (citing *United States of America v. AT&T Inc. and Dobson Communications Corp.*, Competitive Impact Statement (filed Oct. 30, 2007) (citation omitted)) (“...the propagation characteristics of [1900 MHz PCS] spectrum are such that signals extend to a significantly smaller area than do 800 MHz cellular signals. The relatively higher cost of building out 1900 MHz spectrum, combined with the relatively low population density of the areas in question, make it unlikely that competitors with 1900 MHz spectrum will build out their networks to reach the entire area served by the two 800 MHz Cellular providers.”).

A, B, C, and E 700 MHz Block licenses raised a total of nearly \$19 billion in net winning bids. On the other hand, the auction of 50 percent *more* spectrum in the Advanced Wireless Service (“AWS-1”) band raised \$5 billion *less* than the 700 MHz Auction, and this despite the fact that the 700 MHz licenses came with significant conditions, including aggressive build out requirements and (in the case of one major license) open access requirements, that did not apply to AWS-1 licenses.^{5/} AT&T’s proposed purchase price of \$1.925 billion for up to 12 MHz of *unpaired* spectrum in this transaction underscores the intrinsic value of lower band spectrum.^{6/} While T-Mobile and other carriers can and do compete using spectrum above 1 GHz, the fact remains that sub-1GHz spectrum confers particular advantages on its holders.

The Proposed Acquisition Illustrates The Importance Of The Commission Acting Rapidly To Make Additional Spectrum Available For Wireless Broadband Service

As Chairman Genachowski has rightly noted, spectrum is the “oxygen” of mobile broadband services. There is an immediate and substantial requirement for additional mobile broadband spectrum in order to promote jobs, growth, education, and a range of other fundamental social and economic goals. It was for these reasons that President Obama called for the identification and allocation of 500 MHz of new spectrum for wireless broadband services by the year 2020.^{7/}

Likewise, the National Broadband Plan recommended that the FCC identify and allocate an additional 500 MHz of spectrum for wireless broadband services within the next 10 years. Included among the proposed initiatives for obtaining this spectrum, the Plan recommended that the Commission auction the Upper 700 MHz D Block for commercial use and initiate a rulemaking proceeding to reallocate 120 megahertz from the broadcast television bands. It also proposed that NTIA complete an analysis by October 1, 2010 of the possibility of reallocating a portion of the 1755-1850 MHz band from federal to non-federal use to pair with the AWS-3 band. Making more spectrum available for broadband use will help ensure “that America keeps pace with the global wireless revolution.”^{8/}

Faced with the escalating needs for new spectrum generally and spectrum in the 700 MHz band specifically, the FCC should redouble its efforts to make additional spectrum available so that competitors can meet the increased customer demands for wireless broadband. There are

^{5/} See *Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 73*, Public Notice, 23 FCC Rcd 4572, at Attachment A (2008); *Auction of Advanced Wireless Service Licenses Closes, Winning Bidders Announced for Auction 66*, Public Notice, 21 FCC Rcd 10521 (2006).

^{6/} *AT&T Mobility Spectrum ULS Application Public Interest Statement* at 3. See also, Press Release, AT&T Agrees to Acquire Wireless Spectrum from Qualcomm (Dec. 20, 2010) available at <http://www.att.com/gen/press-room?pid=18854&cdvn=news&newsarticleid=31447&mapcode=financial|wireless>.

^{7/} Presidential Memorandum: Unleashing The Wireless Broadband Revolution (June 28, 2010), available at <http://www.whitehouse.gov/the-press-office/presidential-memorandum-unleashing-wireless-broadband-revolution>.

^{8/} *Connecting America: The National Broadband Plan*, The Federal Communications Commission at 84 (March 2010), available at <http://download.broadband.gov/plan/national-broadband-plan.pdf> (“*National Broadband Plan*”).

several steps it can take to achieve this goal. First, it should expeditiously complete its ongoing spectrum inventory and immediately commence proceedings to reallocate spectrum that it identifies in the inventory as appropriate for reallocation.

Second, the Commission should work with NTIA to achieve the reallocation of government spectrum for commercial use and, in particular, in the near term the Commission should focus on the reallocation of the 1755-1780 MHz band. This band is particularly well-suited for commercial broadband services and is ideal for a pairing with the 2155-2180 MHz (“AWS-3”) spectrum band that has already been identified for auction for commercial broadband services.^{9/} The 1755-1780 MHz band is also immediately adjacent to the 1710-1755 MHz band, allocated for AWS-1 mobile operations. Additionally, because the 1755-1780 MHz band is identified internationally for mobile broadband services, reallocating the band for commercial use would allow for economies of scale and scope in the development of infrastructure and mobile devices.^{10/}

Finally, we would respectfully request that the Commission issue a *Notice of Proposed Rulemaking* to open discussion on service and auction rules for the Upper 700 MHz D Block. While we recognize that the President has proposed to reallocate this spectrum for public safety use, that reallocation requires the enactment of legislation, a process that in the best of times is uncertain and is even more difficult in today’s political environment. As Senator Warner has suggested, the Commission should move forward with a D Block *NPRM* so that if Congress has not reached consensus within a year, the FCC would be in a position to auction the spectrum as is required under current law.^{11/}

We continue to believe that commercial use of the D Block with appropriate public safety priority access obligations, as envisioned in the National Broadband Plan, will both provide public safety entities the funding and partnership opportunities for the construction of a public

^{9/} See *National Broadband Plan* at 86-87. Others have supported the *National Broadband Plan*’s recommendation with respect to pairing Advanced Wireless Service spectrum. See, e.g., CTIA- The Wireless Association® Notice of Ex Parte, GN Docket No. 09-51, at 2 (May 27, 2010) (“[S]trongly support[ing] the pairing of AWS-3 spectrum with the federal spectrum in or around 1.7 GHz,” because such a “pairing would: make available a significant amount of additional spectrum for mobile broadband use; further harmonize domestic mobile allocations with international spectrum usage; and eliminate the interference threat posed by unpaired use of the AWS-3 band.”). See also *Constructing a Nationwide, Interoperable, Public Safety Broadband Network: Hearing Before the H. Comm. on Energy and Commerce Subcomm. on Communications, Technology and the Internet*, 111th Cong. (June 17, 2010) (testimony of Steven E. Zipperstein, Vice President, Legal and External Affairs and General Counsel, Verizon Wireless), available at <http://energycommerce.house.gov/documents/20100617/Zipperstein.Testimony.06.17.2010.pdf> (“The FCC’s *National Broadband Plan* noted that this [2155-2180 MHz band] spectrum would be best used if paired with additional spectrum in the 1755-1850 MHz band that is currently allocated to the federal government.... We concur with the Commission’s recommendation to pair 2155-2180 with 25 MHz of contiguous spectrum in the 1755-1850 MHz band.”).

^{10/} *Id.* at 9.

^{11/} *Safeguarding Our Future: Building a Nationwide Network for First Responders: Hearing Before the S. Comm. on Commerce, Science, and Transportation*, 112th Cong. (Feb.16, 2011) (statement of Hon. Mark Warner).

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safety broadband network and also free up much needed spectrum for commercial broadband use.^{12/} Whether or not the spectrum is reallocated, however, the FCC will need to adopt rules governing the use of the D Block and the interaction between public safety and commercial licensees in the 700 MHz band. Commission inaction now means that regardless of the outcome of the legislative process, there will be additional, significant, and unnecessary delay in putting the D Block to use.

In light of AT&T's proposed acquisition of additional 700 MHz licenses, we therefore respectfully urge the Commission, acting in concert with NTIA, to expeditiously allocate additional spectrum for broadband services, in fulfillment of President Obama's directive and the National Broadband Plan, and to act to ensure that the 700 MHz D Block is rapidly and effectively made available to support wireless broadband services to the American public.

Sincerely,

/s/

Thomas J. Sugrue
Senior Vice President, Government Affairs

cc: Kathy Harris
Kate Matraves
Jim Bird
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^{12/} Letter from Kathleen O'Brien Ham, Vice President, Federal Regulatory Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 05-265 (filed Jan. 21, 2011).